BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
Docket No. 2017-32-E

In Re:	)	
	)	
3109 Hwy. 25 S. L.L.C. d/b/a 25 Drive-In and Tommy McCutcheon,	)	
	)	**PETITION FOR REHEARING AND/OR RECONSIDERATION**
Complainant/Petitioner,	)	
	)	
v.	)	
	)	
Duke Energy Carolinas, LLC	)	
	)	
Defendant/Respondent.	)	

Pursuant to S.C. Code Ann. Section 58-27-2150 and 10 S.C. Code Ann. Regs. 103-825(A)(4), and applicable South Carolina law, respondent Duke Energy Carolinas, LLC ("DEC" or the "Company") hereby petitions the Public Service Commission of South Carolina ("Commission") to rehear or reconsider its grant of relief in Order No. 2017-774. The Order was served on DEC on December 21, 2017. As explained further below, the Commission should rehear and reconsider its decision in Order No. 2017-774 because the factual findings made in the order do not provide a basis for the relief granted. Instead, the Commission should withdraw Order No. 2017-774 and issue an order on reconsideration dismissing the complaint and denying any relief sought therein.

BACKGROUND

This matter came before the Commission on the Complaint of 3109 Hwy. 25 S. LLC d/b/a 25 Drive-In and Tommy McCutcheon ("Complainant") claiming that DEC is charging Complainant's business under the wrong rate schedule and that the business should be charged under the "Greenwood Rate."

The Greenwood Rate, which is at the center of the dispute before this Commission in this proceeding, is a product of Act No. 1293, 1966 S.C. Acts 3294 ("the Act" or "Act 1293"). The Act was adopted to approve a contract negotiated between the Greenwood County Electric Power Commission ("GEPC") and DEC's predecessor, Duke Power Company ("Duke Power"), by which Duke Power acquired the facilities of GEPC. The Act included the following provision regarding the rates to be charged to customers who were being transferred:

> The rates to be charged for electric power for all connections which exist at the consummation of the sale shall be the lower of the rates charged by the Greenwood County Electric Power Commission and Duke Power Company and the same shall not be grounds for any claim alleging discrimination. The rates to be charged for electric power for connections after the date of the sale shall be the applicable rates of Duke Power Company. As used herein the word "connections" shall be deemed to mean the physical connection of a resident or business establishment and shall have no reference to the person or business firm occupying the premises so connected, and the benefit of the lower rate shall continue although the person or firm occupying such premises may change from time to time.

By the terms of the Act, as interpreted and applied by this Commission since 1966 and affirmed by the Supreme Court in *Payne v. Duke Power Co.*, 304 S.C. 447, 405 S.E.2d 399 (1991), a change in a customer's needs that requires a change in the facilities used by the Company to provide service to that customer means that the customer is no longer eligible for the Greenwood Rate.

Complainant operates a drive-in movie theater in Greenwood, South Carolina located on Highway 25 South. The drive-in is served by DEC. It was first opened in the 1940s and was purchased by Complainant in 2008. The drive-in location had been served under the Greenwood Rate prior to Complainant's purchase and the Greenwood Rate was allowed to continue after the purchase of the location by Complainant. Prior to the purchase of the drive-in by Complainant, it had not operated in 25 years. At the time of the purchase there was one outdoor screen. Complainant added a screen in 2008 and another in 2016 as well as additional projection equipment and other equipment.

On Saturday, May 30, 2015, at approximately 10:00 p.m., the drive-in experienced a power outage. On Saturday June 13, 2015, at approximately 9:40 p.m., the drive-in experienced another outage. Both outages were accompanied by sparks and melting lines serving Complainant's business. DEC personnel determined that the outages were caused by thermal overload which resulted from an increased demand from Complainant's business. DEC upgraded its facilities for serving Complainant by replacing the transformer and service lines. The new facilities were capable of handling a significantly greater thermal load. Following the upgrade of the facilities, DEC transferred Complainant from the Greenwood Rate to the applicable DEC rate. That transfer occurred on June 18, 2015. The complaint was filed on January 27, 2017.

After a hearing in this matter on April 5, 2017 and April 19, 2017, the Commission issued Order No. 2017-774 on December 21, 2017. That order determined that the energy demand from Complainant's business exceeded the thermal capacity of the DEC facilities and required that DEC upgrade the facilities in order to safely and reliably provide service to Complainant. However, instead of treating the upgraded facilities as a new connection disqualifying Complainant from the Greenwood Rate, Order No. 2017-774 requires DEC to place Complainant back on the Greenwood Rate, unless and until the demand of Complainant's business exceeds the capacity of the facilities that were replaced in June 2015. Because DEC believes that Order No. 2017-774 violates the provisions of Act 1293 and other applicable provisions of law as explained in more detail below, DEC requests that the Commission rehear or reconsider its decision.

GROUNDS FOR REHEARING OR RECONSIDERATION

1. In Order No. 2017-774 the Commission determined that the outages at Complainant's business on May 30, 2015 and June 13, 2015 were caused by the energy demand from Complainant's business overloading the thermal capacity of the DEC facilities used to

provide service to the business. Order No. 2017-744 also determined that it was appropriate for DEC to upgrade the facilities used to provide service to Complainant in order to meet its obligation to provide safe and reliable service. Having made these factual findings, the Commission was required to rule that Complainant was no longer qualified for the Greenwood Rate. Pursuant to Act 1293, the upgrade of the facilities used to provide service to Complainant constituted a new "connection." Once the new connection was placed into service, Complainant no longer qualified for the Greenwood Rate as a matter of law. It is an error of law for the Commission to order that Complainant be transferred back to the Greenwood Rate after the upgrade of the facilities.

2. To the extent that Order No. 2017-744 can be read to have reached a conclusion that the outages at Complainant's business were caused by something other than Complainant's energy demand exceeding the thermal capacity of the DEC facilities, then that conclusion is not supported by substantial evidence. The only reasonable inference from the record in this case is that in May and June of 2015 the energy demand from Complainant's business overloaded the thermal capacity of the DEC facilities and necessitated the upgrade of the facilities that constitutes a new "connection" as that term is used in Act 1293. Because Complainant has been served by a new connection since June 18, 2015, as a matter of law Complainant does not qualify for the Greenwood Rate. It is an error of law for the Commission to order that Complainant be transferred back to the Greenwood Rate.

3. Order No. 2017-774 violates the requirements of S.C. Code Ann. §58-27-810 that require that rates set by the Commission be just and reasonable. As explained above, once

Complainant's energy demand required upgraded facilities, Complainant no longer qualified for the Greenwood Rate. Since Complainant does not qualify for the Greenwood Rate, it is an error of law for DEC to be ordered to provide service at a rate much lower than the rate set by this Commission by which DEC serves its non-Greenwood Rate customers.

4. Order No. 2017-774 has the effect of rewriting the provisions of Act 1293 by which the General Assembly established the criteria for customers to qualify for the Greenwood Rate. Order No. 2017-774 allows Complainant an opportunity to re-qualify for the Greenwood Rate after DEC was required to upgrade its facilities to safely deliver electricity to Complainant's business. Act 1293 provides no such opportunity, and the holding of Order No. 2017-774 places a far greater burden on DEC than was intended by the General Assembly. This aspect of the holding of Order No. 2017-774 is in conflict with the holding in *Duke Power Co. v. South Carolina Public Service Commission*, 284 S.C. 81, 326 S.E.2d 395 (1985) which held that Act 1293 deprived the Commission of jurisdiction to disturb the terms set by the General Assembly. It is an error of law for Order No. 2017-774 to alter the terms of Act 1293.

CONCLUSION

As explained above, DEC submits that the rulings of Order No. 2017-774 exceed the authority of the Commission and are in violation of several provisions of law. The order should be reheard or reconsidered by the Commission, and a new order dismissing the complaint and denying Complainant relief should be issued.

Dated this 2nd day of January, 2018.

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OF SOUTH CAROLINA

Docket No. 2017-32-E

In Re:	)	
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3109 Hwy. 25 S. L.L.C. d/b/a 25 Drive In and Tommy McCutcheon,	)	
	)	**CERTIFICATE OF SERVICE**
Complainant/Petitioner,	)	
	)	
v.	)	
	)	
Duke Energy Carolinas, LLC	)	
	)	
Defendant/Respondent.	)	

This is to certify that I, Toni C. Hawkins, a paralegal with the law firm of Sowell Gray Robinson Stepp & Laffitte, LLC, have this day caused to be served upon the person(s) named below Duke Energy Carolinas, LLC's **Petition for Rehearing and/or Reconsideration** in the foregoing matter by electronic mail to the following addresses:

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Dated this 2nd day of January, 2018.

Toni C. Hawkins